IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 1146 OF 2003

The State of Maharashtra .. Appellants.

vs.

Laxman Vitthal Date & Ors. .. Respondents.

Smt. P.H. Kantharia, A.P.P. for the State.

CORAM: J.N. PATEL &,

R.S. MOHITE, JJ.

Date: 18th January, 2007.

P.C.

. This is an appeal preferred by the State for enhancement of the sentence of the respondents who have been held guilty for having committed offences under section 148, 304 Part I read with section 149 for causing homicidal death of Kundlik Date not amounting to murder and sentenced them for eight years RI and to pay fine of Rs. 2000/- each, in default to suffer R.I. for one year. On account of their conviction for having committed offences under section 304 Part I of IPC all the respondents who have been convicted for the offence under Section 326 read with Section 149 of IPC for causing grievous hurt to Kashinath and sentenced

them to suffer R.I. for five years and to pay a fine of Rs. 2000/- each, in default, to suffer R.I. for six months.

2. It is the contention of the learned APP that the conviction under Section 304 Part I of IPC and under Section 326 of the IPC is inadequate. According to the learned APP, the trial Court was not justified in taking a lenient view particularly in the back-drop that the incident led to causing homicidal death of two persons, namely, Kashinath and Kundlik and that the Court ought to have sentenced them proportionately to the offences committed and that this approach of the Court has resulted in miscarriage of justice.

3. We have gone through the evidence on record and the judgment and order dated 30.4.2003 passed by the Additional Sessions Judge, Pune in Sessions Case No. 182/98. We find that the Court has taken into consideration the facts and circumstances which led to sudden fight in the hit of moment as the result of certain quarrel between the two groups and that the persons found guilty have assaulted the members of the rival group with sticks and stones which resulted in death of two persons and, therefore, it was justified in convicting the accused persons for causing homicidal death of Kashinath under Section 304 Part I of the Indian Penal Code and that of Kundlik under Section 326.

4. It is true that the maximum sentence provided under these two sections is imprisonment for life but that does not mean that in each and every case the Court should award maximum sentence. The discretion exercised by the trial Court in awarding eight years R.I. appears to be just and proper. In the facts and circumstances of the case and in so far as it relates to the accused persons who have been found guilty of offences committed, the offence under section 304 Part I i.e. causing homicidal death of Kashinath and that of five years R.I. for other persons who have committed offence punishable under Section 326 of IPC for causing grievous hurt to deceased Kashinath who unfortunately succumbed to his injuries. Even applying the principal of proportionately in awarding the sentences, it is not that the trial Court has not taken into consideration all the surrounding circumstances and has come to the conclusion that the case of the accused persons would fall within exception 4 of Section 300 of IPC. The Court was justified in awarding the sentence of RI for 8 years for the offence under Section 304 Part I and RI for 5 years for the offence under section 326 respectively. Therefore, in the facts and circumstances, no case for enhancement is made out. The appeal stands dismissed.

(J.N. Patel, J.)

(R.S. Mohite, J.)